MARK L. WHITMAN

IBLA 86-360 Decided August 5, 1987

Appeal from a decision of the Anchorage District Office, Alaska, Bureau of Land Management, rejecting notice of location of headquarters site. AA-56629.

Affirmed.

1. Alaska: Headquarters Sites -- Withdrawals and Reservations: Effect of

A notice of location of a headquarters site is properly rejected where at the time of filing the land involved is not unreserved public land because it had been withdrawn from all forms of appropriation under the public land laws by Public Land Order No. 5418 for classification and protection of the public interest.

APPEARANCES: Mark L. Whitman, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Mark L. Whitman has appealed from a decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), dated January 13, 1986, rejecting his notice of location of headquarters site AA-56629.

On September 10, 1985, appellant filed a notice of location for 3.78 acres of land (U.S. Survey No. 2845) situated in sec. 19, T. 42 S., R. 56 E., Copper River Meridian, Alaska, next to Lacy Cove, as a headquarters site under section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1982) (repealed effective October 21, 1986, subject to valid existing rights, by section 703(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2790 (1976)). In his location notice, appellant claimed no prior settlement or occupancy of the site. In its January 1986 decision, BLM rejected appellant's location notice because the land had been withdrawn "for classification and for protection of the public interest" by Public Land Order (PLO) No. 5418, dated March 25, 1974 (39 FR 11547 (Mar. 29, 1974)), and the land had not been classified "as suitable for settlement entry."

In his statement of reasons for appeal (SOR), appellant intimates that PLO No. 5418 is not applicable to the land involved herein, which has historically been open to settlement entry. Appellant also challenges PLO No. 5418 on the basis that it does not comply with the withdrawal provisions of section 204 of FLPMA, 43 U.S.C. § 1714 (1982). Appellant also charges BLM with laches in rejecting his application, claiming that he has incurred substantial expenses in developing the site. Finally, appellant argues that establishment of the headquarters site is in the public interest since he intends that it serve as a "training site" for problem youth.

[1] By its terms, PLO No. 5418 withdrew, subject to valid existing rights, "[a]ll unreserved public lands in Alaska" from all forms of appropriation under the public land laws. 1/ The record indicates that the land involved herein was "unreserved" public land at the time of issuance of PLO No. 5418. Accordingly, this land, although not specifically named in PLO No. 5418, was withdrawn from appropriation under the public land laws. 2/ The record indicates that this withdrawal was still extant at the time of the filing of appellant's location notice.

Under section 10 of the Act of May 14, 1898, as amended, a duly qualified applicant is entitled to purchase "one claim, not exceeding five acres, of unreserved public lands * * * as a * * * headquarters." 43 U.S.C. § 687a (1982). However, where, at the time of the filing of appellant's location notice the land had been withdrawn by PLO No. 5418, the land could not be considered "unreserved." Cf. Bering Straits Native Corp., 87 IBLA 96, 99 (1985). It does not matter that the land has historically been open to settlement entry. Accordingly, BLM properly rejected appellant's notice of location of a headquarters site with respect to that

1/ PLO No. 5418 was an amendment of PLO No. 5180, dated March 9, 1972 (37 FR 5583 (Mar. 16, 1972)), which had specifically withdrawn described land "from all forms of appropriation under the public land laws."

2/ Appellant suggests on appeal that there were "valid existing rights," excepted from the effect of the withdrawal under PLO No. 5418. However, appellant has pointed to no rights in the land held by anyone prior to issuance of PLO No. 5418. At best, appellant refers to evidence of historical use, i.e., "the crumbling remnants of a dry-rotted log cabin" (SOR at 2). This is insufficient to establish a valid existing right and certainly not one in which appellant has an interest. See The Bureau of Land Management Wilderness Review and Valid Existing Rights, Solicitor's Opinion, 88 I.D. 909, 912 (1981); Harry H. Wilson, 35 IBLA 349 (1978). In particular, appellant has not established that he had a valid existing right to a headquarters site at the time PLO No. 5418 was issued. See Rene P. Lamoureux, 39 IBLA 36, 40 (1979); John D. Ketscher, 32 IBLA 235, 237 (1977) (PLO No. 5418). We note that the land involved herein was apparently at one time occupied as a homesite and excluded from withdrawal of the land as part of the Tongass National Forest. See Exec. Order No. 8172, 3 CFR 518 (1938-1943 Comp.). However, that homesite was apparently abandoned prior to patent.

land. See Mary S. Brandt, 85 IBLA 140 (1985); Rene P. Lamoureux, 20 IBLA 243 (1975).

Appellant, however, contends that PLO No. 5418 does not comply with section 204 of FLPMA. That section governs orders of the Secretary which make, modify, extend, or revoke withdrawals, but applies by its terms only to such action taken "[o]n and after the effective date of this Act." 43 U.S.C. § 1714(a) (1982). The effective date of FLPMA was October 21, 1976. Accordingly, section 204 of FLPMA did not apply to issuance of PLO No. 5418 on March 25, 1974. Rather, the withdrawal effected by PLO No. 5418 continued upon passage of section 204 of FLPMA, subject to review by the Secretary. William C. Reiman, 54 IBLA 103, 105 (1981).

Appellant also contends that the January 1986 BLM decision should be overturned on the basis of laches because of the delay in adjudicating his location notice. 3/ In view of withdrawal of the land involved herein from all forms of appropriation under the public land laws, appellant acquired no rights in the land upon the filing of his notice of location of a headquarters site. Furthermore, appellant is deemed to have known of that withdrawal by virtue of its publication in the Federal Register. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. § 1507 (1982). Therefore, appellant's efforts to develop the site were taken at his own risk. In saying this, we recognize that BLM delayed in formally rejecting appellant's location notice. While this delay is unexplained, it simply cannot serve to create any rights in appellant. See John D. Ketscher, 32 IBLA 235, 237 (1977). Indeed, it is well established, both by Departmental regulation and judicial case law, that the United States is not barred by the equitable doctrine of laches from enforcing a public right or protecting a public interest. 43 CFR 1810.3(a); United States v. California, 332 U.S. 19, 40 (1947); see also Hugh B. Fate, Jr., 86 IBLA 215, 226-27 (1985), and cases cited therein. Thus, where the land involved herein had been withdrawn from all forms of appropriation under the public land laws, BLM was not precluded by virtue of any delay in its adjudicative process in rejecting appellant's location notice.

Finally, appellant contends that his headquarters site is in the public interest. We do not doubt the worthwhile purpose to which appellant intends to devote the land involved herein. However, that does not change the fact that, at the time of the filing of appellant's location notice, the land was withdrawn from all forms of appropriation under the public land laws, including purchase as a headquarters site.

Accordingly, we conclude that BLM properly rejected appellant's notice of location of headquarters site AA-56629.

3/ Appellant notes that he informed BLM by letter dated Oct. 21, 1985, that he was proceeding "to buy materials and do construction research for the proposed structures to be built at Lacy Cove." Appellant states that BLM nevertheless failed to inform him of any "complications" until Jan. 13, 1986.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge